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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 V&A COLLECTION, LLC,

4 Plaintiff,

5 v.

20 CV 1797 (KPF)

6 GUZZINI PROPERTIES LTD.,

7 Defendant.

8 -----x

9 New York, N.Y.  
March 6, 2020  
1:44 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14 GROSSMAN LLP

15 Attorneys for Plaintiff

16 BY: JUDD B. GROSSMAN

LINDSAY E. HOGAN

17 MAZZOLA LINDSTROM LLP

Attorneys for Defendant

18 BY: RICHARD E. LERNER

19 WENDY J. LINDSTROM

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1 (Case called)

2 MR. GROSSMAN: Good afternoon, your Honor. Judd  
3 Grossman, on behalf of plaintiff, V&A Collection.

4 THE COURT: Thank you very much. And with you at  
5 counsel table?

6 MS. HOGAN: Good afternoon, your Honor. Lindsay  
7 Hogan, from Grossman LLP, on behalf of plaintiff.

8 THE COURT: Thank you very much.

9 To which of you should I be directing my questions  
10 this afternoon?

11 MR. GROSSMAN: To me, your Honor.

12 THE COURT: Thank you, Mr. Grossman.

13 And at the back table.

14 MS. LINDSTROM: Hi, your Honor. My name is Wendy  
15 Lindstrom. I'm with Mazzola Lindstrom, and we represent  
16 Guzzini.

17 THE COURT: Thank you very much.

18 MR. LERNER: I'm Richard Lerner. I'm also with  
19 Ms. Lindstrom, appearing for Guzzini.

20 THE COURT: Okay. Thank you.

21 I think we have another law firm listed in ECF for  
22 you, but that's because people move and ECF doesn't update.

23 Welcome to everyone this afternoon. Thank you very  
24 much for appearing.

25 Let me ask -- Ms. Lindstrom, am I directing to you?

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1 MS. LINDSTROM: Yes, your Honor.

2 THE COURT: Ms. Lindstrom, have you received the  
3 materials regarding a motion in this court, as distinguished  
4 from state court, for service by alternate means and by  
5 expedited discovery?

6 MS. LINDSTROM: Yes, your Honor, I have.

7 THE COURT: I'll ask your thoughts on it a little bit  
8 later.

9 Mr. Grossman and Ms. Hogan, just because this is our  
10 first meeting together, I'd like you to know that in each of  
11 the matters or papers that you submitted to me, you have my  
12 name presented incorrectly, so just going forward, get the name  
13 right, and if you look on the website, you'll see how I  
14 presented it.

15 MR. GROSSMAN: Apologies.

16 THE COURT: No, it's fine. We begin the process  
17 knowing it.

18 But let me, actually, since you did not remove the  
19 case, and the folks at the back table did, my questions begin  
20 with them. So, excuse me.

21 Ms. Lindstrom, tell me, please, the status of the  
22 action before Judge Cohen regarding the Stigler painting.

23 MS. LINDSTROM: Your Honor, we filed on behalf of  
24 Guzzini, as a plaintiff, a case in the state court because we  
25 are naming a painting, a Stengel painting, in rem.

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1 THE COURT: Yes, I saw that. And I've read -- your  
2 adversary included a transcript of a conference before Judge  
3 Cohen taking place on or about February 19th of 2020. I have  
4 read it.

5 MS. LINDSTROM: Yes.

6 Okay. So, your Honor, this case involves a completely  
7 different painting, and it involves completely different  
8 claimants.

9 THE COURT: Ms. Lindstrom --

10 MS. LINDSTROM: No one is in common.

11 THE COURT: Ms. Lindstrom, I'm just asking a question,  
12 and please don't answer the question that I haven't asked. My  
13 question is: What is the status of the state court action? Is  
14 it going on right now, today?

15 MS. LINDSTROM: Yes, absolutely, your Honor.

16 THE COURT: Thank you.

17 Who are the parties in that action?

18 MS. LINDSTROM: Guzzini is the plaintiff, and it is an  
19 in rem action against a painting, a Stengel painting.

20 THE COURT: Yes.

21 MS. LINDSTROM: There are also additional claimants  
22 that have filed as intervening plaintiffs, one of which, I  
23 believe, is SAT Finance, which is a company that is affiliated  
24 with Sasha Pesko, and another company called FAP, and that  
25 company is a lender that is also stating claim to that work of

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1 art, that Stengel.

2 THE COURT: Yes. My understanding from the transcript  
3 that I read was that V&A attempted to intervene, but was denied  
4 intervention precisely because it was respecting a different  
5 painting; am I correct?

6 MS. LINDSTROM: Absolutely, your Honor, you're  
7 correct.

8 THE COURT: Okay.

9 What was confusing to me is that later on in the  
10 proceedings, the suggestion, that I'm not sure from whom it  
11 emanates, is to file another action, and Judge Cohen was going  
12 to consider them in tandem. Did I not read that correctly?

13 MS. LINDSTROM: Your Honor, you did read that  
14 correctly.

15 THE COURT: Okay.

16 MS. LINDSTROM: There was discussion at that  
17 conference that the plaintiff, V&A, a totally unrelated  
18 plaintiff, would file an action in that court, and that would  
19 be marked as a related action.

20 THE COURT: Yes.

21 MS. LINDSTROM: However, Guzzini is not a defendant in  
22 that action, and Guzzini does not agree that that's a related  
23 action in any way.

24 THE COURT: But it's a little bit unfortunate. Did  
25 you tell Judge Cohen then that as he was articulating this plan

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1 to have the cases heard relatedly, that you were going to  
2 object and remove the case to federal court, so that he  
3 couldn't do that? Because that seems -- I think you should  
4 have let him know then that you --

5 MS. LINDSTROM: Your Honor.

6 THE COURT: Let me finish. Thank you.

7 I think you should have let him know then that you  
8 were going to be putting up that roadblock, because they set up  
9 a conference, and then you removed the case. You could have  
10 let him know on February 20th that you believed these were so  
11 unrelated, that they should not even be heard in tandem.

12 So I guess I'm a little confused as to when the  
13 decision was made to remove. Did you know, at the moment of  
14 that conference, that you were going to remove?

15 MS. LINDSTROM: Absolutely not, your Honor. I made a  
16 strategic decision on Monday, after I read the pleadings that  
17 the V&A parties filed, and I thought about it long and hard,  
18 and I thought it would be a smart, tactical decision to have a  
19 fresh set of eyes in an unrelated court, in an unrelated  
20 proceeding, review the V&A pleading. I certainly had no  
21 intention of misleading the Court, the New York Supreme Court,  
22 but when I really gave it thought, one of our biggest arguments  
23 is that there is no jurisdiction over our client in this  
24 matter, and that there should be services under the Hague  
25 Convention.

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1 THE COURT: Again, again, you're getting ahead of  
2 yourself. I promise you, I know the questions to ask, and I  
3 will ask them. Please answer the questions that I am asking,  
4 and not the ones you think I'm asking.

5 Go on.

6 MS. LINDSTROM: I just made a tactical decision on the  
7 Monday after he filed to remove.

8 THE COURT: Okay. One moment, please.

9 MS. LINDSTROM: Oh, I apologize, your Honor. It was  
10 Friday.

11 THE COURT: Okay. Thank you.

12 Your view is -- well, you have several views. You  
13 believe there is no jurisdiction over your client?

14 MS. LINDSTROM: That is correct, your Honor.

15 THE COURT: Okay.

16 You believe, as well, that you can simultaneously  
17 remove the case to federal court and disclaim any -- and  
18 require service through the Hague Convention?

19 MS. LINDSTROM: Yes, absolutely, your Honor.

20 THE COURT: I see. I might be disagreeing with you,  
21 but we shall see.

22 Where is the painting?

23 MS. LINDSTROM: Your Honor, it's in Europe.

24 THE COURT: Where?

25 MS. LINDSTROM: It's in Switzerland.

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1 THE COURT: With whom?

2 MS. LINDSTROM: It is with an affiliate. It's  
3 confidential proprietary information, but it's with an  
4 affiliate of my client, the director of --

5 THE COURT: Hold on, please. Back up. Europe, I  
6 understand. Switzerland, I understand. Affiliate of your  
7 client, I understand.

8 What do you mean it's confidential proprietary  
9 information? I thought you said -- and I will look again at  
10 the proceeding. I thought you said that it had been sold. If  
11 you'll give me a moment, please -- here. Mr. Lerner says: "My  
12 client no longer owns the work, and it's not in New York."

13 Was there an asterisk there that should have been, "My  
14 client doesn't, but an affiliate of my client continues to own  
15 the work"? Is that the point being made? Because I'd like to  
16 be sure I understand this.

17 MS. LINDSTROM: Certainly your Honor.

18 My client transferred the work on November 1st to a  
19 company where the director of my client is one of the directors  
20 at the company that it was transferred to.

21 THE COURT: Either under common conceptions or under  
22 Swiss law, is it an affiliate of your client, Guzzini  
23 Properties?

24 MS. LINDSTROM: Your Honor, I'm not a Swiss attorney.  
25 I can't opine on Swiss law.



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1 THE COURT: Fair enough.

2 What is the name of the company?

3 MS. LINDSTROM: The name is Lanark.

4 THE COURT: How is that spelled, please?

5 MS. LINDSTROM: L-a-n-a-r-k.

6 THE COURT: Okay. Right now, today, I'm assuming --  
7 Lanark is clearly not an individual, so, in my mind, which  
8 could be completely incorrect, it's not on somebody's mantel  
9 right now. It's awaiting something. It hasn't been sold, it  
10 hasn't been otherwise resolved. Or is it -- because I'm not so  
11 wealthy to have paintings like this, is it something where  
12 folks buy it in the name of a company, but they do hang it up  
13 on their wall?

14 MS. LINDSTROM: Your Honor, sometimes that's the case.  
15 In this instance, however, it is in storage in Switzerland. As  
16 of November 1st, it has never been moved from storage in  
17 Switzerland.

18 THE COURT: Okay.

19 MS. LINDSTROM: It's always been there. No  
20 emergencies have happened. There's been no change in location,  
21 aside from I think that it may have been moved from one storage  
22 facility to the next storage facility or within the same  
23 storage facility, but nothing material has happened since  
24 November 1st.

25 THE COURT: If you know, and you may not -- I'm sorry,

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1 the name is Lanark?

2 MS. LINDSTROM: L-a-n-a-r-k.

3 THE COURT: That's right, you did spell that, yes.

4 Thank you.

5 Would you know if Lanark presently intends to, for  
6 example, consign this painting for auction, sell it to someone?  
7 I mean, can we trust that until I resolve these jurisdictional  
8 issues, it's not going to get sent to someone else? Or can I  
9 not?

10 MS. LINDSTROM: Yes, absolutely, your Honor. I can  
11 represent that they will not move that to anyone else in  
12 Lanark, although I do not represent Lanark, but I have direct  
13 communication with one of the directors there.

14 THE COURT: I see. And you can tell him that I asked  
15 really nicely --

16 MS. LINDSTROM: Yes.

17 THE COURT: -- if they could refrain from moving it?

18 MS. LINDSTROM: Yes, absolutely, your Honor.

19 THE COURT: Okay.

20 And do I understand you a moment ago to have been  
21 saying that on or about the 1st of November, it was transferred  
22 from Guzzini Properties to Lanark?

23 MS. LINDSTROM: Yes, absolutely.

24 THE COURT: Okay.

25 When you say a transfer -- excuse me if this sounds

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1 like an obtuse question -- do you mean that the physical  
2 painting was carried from one room to another, or is it that  
3 there was a document that recited that title had once reposed  
4 with Guzzini and now reposes with someone else, or both, or  
5 neither?

6 MS. LINDSTROM: Your Honor, I, frankly, know that  
7 there's documentation showing a transfer and, frankly, an  
8 invoice. That being said, I'm not sure if it went within  
9 different storage accounts, I just don't have those details at  
10 this time, but I know that it's in storage in Switzerland.

11 THE COURT: Okay, okay. Staying in storage, not going  
12 anywhere at least for the moment. Okay, great. Thank you for  
13 letting me know that.

14 This seems this case, and the case before Judge Cohen,  
15 are, from judges' perspectives, quite interesting because  
16 they're not like our bread and butter fare, but maybe all art  
17 law cases are interesting in that regard. In your other case,  
18 in the in rem action, I believe that either in the conference  
19 or in your complaint, you explained why your client's ownership  
20 of the property supervened any other ownership. I believe in  
21 one case, the issue -- one of the reasons given was that the  
22 other entity had contracted to purchase the painting, but  
23 hadn't performed in full. I'm sorry, I'm saying painting, I  
24 really mean the Stengel. Is that a photograph and not a  
25 painting?

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1 MS. LINDSTROM: It's a painting, your Honor.

2 THE COURT: Thank you so much.

3 And with respect to another putative entity, that they  
4 were not the owner because they had participated in the  
5 auction, and, therefore, by necessity, they could not be the  
6 owner.

7 Are you able to comment on the claims of the plaintiff  
8 in this case? Is there some reason that you might believe that  
9 what has been said to me in this complaint is incorrect?

10 MS. LINDSTROM: Yes, absolutely, your Honor. And this  
11 is part of the reason why, on Friday, after Mr. Grossman filed  
12 the action in New York Supreme, I wanted a fresh set of  
13 judicial eyes, be it as it may, on this, because there is --  
14 the contract that Mr. Grossman is calling a financing statement  
15 and a loan is not a financing statement or a loan. It clearly  
16 states -- and Mr. Grossman marked it as an exhibit to his  
17 complaint, so your Honor could look at it.

18 THE COURT: Yes, I have it.

19 MS. LINDSTROM: So, if you look at -- the contract  
20 itself, not -- you have two different sets of paperwork in  
21 front of you. On August 28, there is an extension agreement of  
22 the contract. And then in June of 27, you have the actual  
23 contract itself. And if you look under A, it says, "The  
24 sellers agree to sell the artwork, and buyer agrees to purchase  
25 the artwork." And then, if you go to the next page, paragraph

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2, it talks about the sale and purchase on and subject to the terms and conditions of this agreement --

THE COURT: Please, please, I'll ask you, please, to slow down for the court reporter and judge. Thank you so much.

MS. LINDSTROM: Sure.

-- and in consideration of the payment to the buyer of the purchase price, the seller hereby sells to the buyer all legal and beneficial ownership in the artwork, and the buyer agrees to buy the artwork.

At paragraph 3.4 in that document, it says, "Legal and beneficial title in the artwork shall transfer to the buyer upon the buyer's payment of the purchase price to the seller." And then it talks, in 4.1.1, how the seller has full legal and beneficial title to the artwork and is entitled, without further action, to transfer the legal and beneficial title in the artwork to the buyer on the terms of the agreement without the consent of any third party.

And then going to the next page, it does talk about a seller's option to buy the artwork back.

THE COURT: Yes.

MS. LINDSTROM: And then it talks -- in 8.1, it talks about how this is the whole agreement, and 8.7, it talks about this contract as governed in accordance with English law, and there is an English jurisdiction clause.

So, it's my view that this contract is governed by

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1 English law, and any claims arising from this contract should  
2 be adjudicated in England.

3 Now, taking this one step forward, the first page of  
4 that document, dated August 28, 2018, is what the plaintiff's  
5 attorney will likely argue with you creates a loan out of this,  
6 which, in our view, this is an extension only of the buyback  
7 clause. And this is not an extension of the contract in whole,  
8 but, obviously, I'll let the plaintiff --

9 THE COURT: Yes, thank you.

10 MS. LINDSTROM: -- argue that.

11 But going one step further, V&A is not a party to this  
12 contract, and the plaintiff and his lawyer, knowing that V&A is  
13 not a party to this contract, contacted my client, without me  
14 knowing about it --

15 THE COURT: Wait, I'm sorry, start that again, please.  
16 Go ahead.

17 MS. LINDSTROM: The plaintiff --

18 THE COURT: Yes, the plaintiff here.

19 MS. LINDSTROM: -- and possibly the plaintiff's lawyer  
20 had his client, Victoria Brooks, contact my client directly,  
21 schedule a meeting in London, flew to London, appeared at that  
22 meeting with my client outside of my presence, and without  
23 telling me about this --

24 THE COURT: Okay, okay. Again, slow down, please, for  
25 the court reporter. Thank you. And the judge.

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1 MS. LINDSTROM: -- in violation of Rule 4.2 of the  
2 New York Rules of Professional Conduct, which says, very  
3 clearly, that in representing a client, a lawyer shall not  
4 communicate or cause another to communicate about the subject  
5 of representation with a party the lawyer knows to be  
6 represented by another lawyer in the matter unless the lawyer  
7 has prior consent of the other lawyer. And he never told me  
8 that he was going to London, meeting with my client --

9 THE COURT: Well, I'll talk to Mr. Grossman  
10 momentarily about whether he was there, but, okay. And? And  
11 did something happen at this meeting other than the fact that  
12 this meeting happened?

13 MS. LINDSTROM: No, but, your Honor, if he's so  
14 willing to go to London with his client, why can't he litigate  
15 this case in London, where there's the jurisdiction clause over  
16 the contract --

17 THE COURT: Please stop on that. For that contract, I  
18 can read, and I see that that's the jurisdiction clause, but I  
19 thought the issue was the agreement that was or was not reached  
20 sometime in 2013 between V&A -- the original agreement. They  
21 may be talking -- I don't really think Mr. Grossman's talking  
22 about the validity or not of your agreement, other than the  
23 fact that it was preceded by an agreement his client had  
24 several years earlier regarding the same painting. And so I  
25 appreciate what you're saying; I know there's some discussion

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1 about whether it's a loan or a sale, and that's not of as much  
2 interest to me.

3 Do you dispute, or do you not have enough knowledge to  
4 know, that there was a purchase by the plaintiff in this case  
5 of a 50 percent interest in the Guiton painting that is at  
6 issue?

7 MS. LINDSTROM: Your Honor, I have no knowledge of  
8 that contract, and my client had no knowledge of that contract.  
9 And the first that I know that the plaintiff approached my  
10 client were when they attempted to acquire it from Guzzini when  
11 Mr. Grossman and his client went over to London to meet with my  
12 client. I was not present at that meeting, so I don't know --

13 THE COURT: When, approximately -- of course, you  
14 weren't present. That's the part of your upsetment about it.

15 MS. LINDSTROM: Yes.

16 THE COURT: Tell me, please, when that meeting took  
17 place.

18 MS. LINDSTROM: I believe that was the end of January,  
19 but -- as a matter of fact, I saw Mr. Grossman at the winter  
20 show at the armory approximately two days before, and he never  
21 mentioned to me that he would be flying to London and meeting  
22 with my client.

23 THE COURT: Okay. All right.

24 Let me do this, please, let me please hear from  
25 plaintiff's counsel, and then I'll hear again from you. Thank



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1 you.

2 Mr. Grossman, I had other questions for you, but she's  
3 just raised a topic of interest. So why don't you tell me, did  
4 you, in fact, participate in a meeting in January with  
5 representatives of the defendant?

6 MR. GROSSMAN: I absolutely did, your Honor. And I  
7 have to tell you I feel like I'm kind of being set up here.  
8 That meeting was set up between the principals requesting that  
9 counsel from both sides be present.

10 THE COURT: Please back up for those of us who were  
11 not in attendance.

12 MR. GROSSMAN: Sure.

13 THE COURT: When, approximately, were these  
14 discussions about setting up the meeting taking place? In  
15 December? In January?

16 MR. GROSSMAN: I don't know when the first discussions  
17 occurred. One of the principals of V&A Collection has been in  
18 touch with a representative of Guzzini, the -- Lisa Reuben --  
19 she's the daughter of either Simon or David Reuben, the Reuben  
20 brothers -- since as early as October. I wasn't involved at  
21 that time. Those discussions and subsequent discussions were  
22 between the principals only.

23 THE COURT: The principals only.

24 When were you made aware that these discussions were  
25 taking place? Contemporaneously with them taking place or

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1     sometime thereafter?

2             MR. GROSSMAN:   Sometime thereafter.

3             THE COURT:   Do you have a recollection of what month  
4     it might have been that you might have learned that these  
5     discussions were taking place?

6             MR. GROSSMAN:   Probably as early as November.   Late  
7     October/early November is my best recollection.

8             THE COURT:   Well, let's ask this:   Was there any  
9     discussion about the situs of the painting at that time?   Where  
10    it was located?

11            MR. GROSSMAN:   So I can -- discussions between me and  
12    my client or between the principals?

13            THE COURT:   No, no, excuse me.   At the time they were  
14    having these discussions, did anybody know the painting was  
15    going to be moved on or about November 1st?

16            MR. GROSSMAN:   No.   In fact, until the end --

17            THE COURT:   No is a fine answer.

18            MR. GROSSMAN:   No.

19            THE COURT:   Thank you very much.

20            So, there were discussions in late 2019 about having a  
21    meeting between the principals, yes?

22            MR. GROSSMAN:   I don't know if they were discussing  
23    meeting at that point.

24            THE COURT:   Fair enough.

25            There were discussions about this painting?

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1 MR. GROSSMAN: There were ongoing discussions between  
2 the principals on how to resolve these competing title claims,  
3 yes.

4 THE COURT: Understood.

5 At some point, somebody said, let's meet?

6 MR. GROSSMAN: At some point, there were phone  
7 conversations and text messages between the principals saying,  
8 let's meet with the lawyers in London, correct.

9 THE COURT: Am I correct that you did not instigate  
10 either the conversations or the text messages?

11 MR. GROSSMAN: You are correct, absolutely.

12 THE COURT: Were you involved at the time that they  
13 were taking place? I thought I heard you say that you came to  
14 the case a little bit later.

15 MR. GROSSMAN: I came to represent this client, V&A  
16 Collection, a little bit later. We represent another claimant  
17 in the pending Guzzini case, SAT Finance.

18 THE COURT: SAT Finance. Thank you. Fair enough.

19 SAT Finance does not have common owners, directors,  
20 principals, with V&A?

21 MR. GROSSMAN: No relationship at all.

22 THE COURT: Thank you.

23 So V&A and Guzzini principals were talking, and  
24 eventually they talked about meeting?

25 MR. GROSSMAN: Correct.

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1 THE COURT: And eventually they met?

2 MR. GROSSMAN: Correct.

3 THE COURT: You were invited -- the understanding you  
4 had was that both attorneys were being invited to come?

5 MR. GROSSMAN: I've seen the text message exchange  
6 from the other side confirming that a meeting with lawyers will  
7 take place at Guzzini's office in London, correct.

8 THE COURT: When did this meeting take place?

9 MR. GROSSMAN: January 28th, I believe, or 29th, but I  
10 believe it was the 28th.

11 THE COURT: Okay. And you went?

12 MR. GROSSMAN: I went.

13 THE COURT: And a principal from your client went?

14 MR. GROSSMAN: Correct.

15 THE COURT: And it was Guzzini's offices, so there was  
16 someone from Guzzini there?

17 MR. GROSSMAN: There was -- Lisa Reuben was there, one  
18 of her advisors from Guzzini was there, and then someone was on  
19 the phone.

20 THE COURT: How does she spell her last name, please?

21 MR. GROSSMAN: Lisa Reuben?

22 THE COURT: Yes, please.

23 MR. GROSSMAN: I believe it's R-e-u-b-e-n.

24 THE COURT: Thank you. I wanted to be sure. There  
25 are different spellings.

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1           Were you surprised when there was no attorney present  
2           for Guzzini?

3           MR. GROSSMAN: I was very surprised.

4           THE COURT: Did you comment to anyone about there  
5           being no presence -- no attorneys present?

6           MR. GROSSMAN: Absolutely. We walked into the room,  
7           after we were announced. The first I was told that their  
8           lawyers wouldn't be present is as I walked into the room.

9           THE COURT: Who told you -- a Reuben or someone else?

10          MR. GROSSMAN: Lisa Reuben.

11          THE COURT: Lisa Reuben, okay.

12          MR. GROSSMAN: She said I called my lawyers and told  
13          them not to come to the meeting.

14          THE COURT: Okay. Just because there's a lot of  
15          gesticulating going on behind you right now, which they know is  
16          inappropriate and it's really distracting, can I just  
17          understand that you're making statements to me as an officer of  
18          the court, recognizing the full panoply of sanctions I have  
19          available if it turns out you're lying to me? I just want to  
20          get that out there. Yes?

21          MR. GROSSMAN: Of course, your Honor.

22          THE COURT: All right. Thank you.

23          So you stayed at the meeting?

24          MR. GROSSMAN: I stayed at the meeting.

25          THE COURT: All right. The meeting didn't resolve

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1 anything?

2 MR. GROSSMAN: No.

3 THE COURT: Because here we are.

4 MR. GROSSMAN: That's right.

5 But I want to be very clear, and as I know the Court  
6 does, I couldn't take more seriously those ethical obligations  
7 and responsibilities. That meeting was conducted with the  
8 understanding, both based on writings that I saw and statements  
9 from Guzzini's principal, that that meeting was taking place  
10 with her lawyers' knowledge and consent. I --

11 THE COURT: Let me make sure how you deduced that.  
12 First of all, you saw the text messages or the written  
13 communications regarding lawyers being present. When you were  
14 told by Ms. Reuben that she had told her lawyer to stay home,  
15 you understood that her lawyer, nonetheless, was aware of the  
16 meeting because she was being told to stay home from the  
17 meeting?

18 MR. GROSSMAN: Well, of course.

19 THE COURT: Okay. I'm just checking. That's fine.

20 MR. GROSSMAN: Absolutely.

21 THE COURT: I need to connect the dots.

22 MR. GROSSMAN: If I can finish it, because, again, of  
23 course, I take this very seriously.

24 THE COURT: Yes, of course.

25 MR. GROSSMAN: The following day, I reached out -- at

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1 the conclusion of that meeting, at Ms. Reuben's suggestion, the  
2 following day, I reached out to Ms. Lindstrom about that  
3 meeting to discuss next steps relating to that meeting. It was  
4 never an intention to have that meeting unbeknownst to them or  
5 Ms. Reuben's other lawyers in London. I wasn't sure which  
6 lawyers were going to be there, but the point is, at every  
7 step, my understanding, based on all that information and  
8 representations to me, was that that meeting was conducted with  
9 Guzzini's lawyers' knowledge and consent.

10 THE COURT: All right.

11 The day may come when I may want to see the text  
12 messages, but we're not there yet.

13 I began with your adversary, because the case came to  
14 me by means of removal. I also began with your adversary  
15 because I wanted to know where the painting was. Now, I do.  
16 Now you know as well.

17 MR. GROSSMAN: Now we do.

18 THE COURT: Does that not moot one of your requests to  
19 me? We know where it is, and she's represented to me they're  
20 not moving it, at least in the near term. So isn't that enough  
21 for that?

22 MR. GROSSMAN: I think so, your Honor. The only  
23 reason we're here is because at that same February 19th  
24 conference, on the record, I suggested to the court, I said, I  
25 don't mean to mince words -- and this is at page 15 --

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1 THE COURT: One moment, please, while I get to page  
2 15. Yes?

3 MR. GROSSMAN: -- line 18 -- when representations were  
4 made by Guzzini's counsel that they no longer owned the work  
5 and that it had been transferred, I pointed out, not physically  
6 being in control of something is very different than not having  
7 custody or control; for all we know, this may have been  
8 transferred to an affiliate, and the timing.

9 THE COURT: Yes. But, of course, she told me it was  
10 not transferred to an affiliate, it was transferred to someone  
11 with a common director. And on the next page, Mr. Lerner is  
12 asked the question -- Mr. Lerner enjoys being spoken about in  
13 the third person even though he's here in the courtroom -- he  
14 is representing that Guzzini is not in a position to transfer,  
15 sell, pledge, assign, or otherwise dispose of this painting.  
16 He responds: "It's out of its possession and control." And  
17 then he -- I guess his invocation of "in God we trust" is his  
18 way of suggesting that he means this very seriously and is  
19 taking this in the same way I asked you as an officer of the  
20 court. So I think we have the analogue there.

21 MR. GROSSMAN: Yes.

22 THE COURT: All right. So you are surprised, and  
23 that's fine.

24 But today, you and I now know where it is --

25 MR. GROSSMAN: Right.



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1 THE COURT: -- who it's with, that it's in storage,  
2 and that today, it's not going anywhere else, and it's not  
3 hanging on anyone's mantel or on the wall of this courtroom.  
4 So that answers, I think, some of the questions.

5 It doesn't answer other questions, of course, about  
6 whose painting it is, do I have jurisdiction over Guzzini,  
7 things of that nature. But that thing is resolved, yes?

8 MR. GROSSMAN: Yes, your Honor. If those  
9 representations had been made on the 19th, we wouldn't be here  
10 today.

11 THE COURT: I know, but it's lovely to meet everyone.

12 MR. GROSSMAN: Yes, I agree.

13 THE COURT: So now we're on the other issue, which is  
14 substitute of service now. I'm intuiting, from Ms. Lindstrom's  
15 comment, they're not accepting service even -- and I  
16 understand, because I understand the law in this area, too,  
17 that it would be difficult for Guzzini to argue that it doesn't  
18 have notice. But I haven't given an opportunity, a fair  
19 opportunity, for Ms. Lindstrom and Mr. Lerner to speak to the  
20 issue of why substitute service is inappropriate here, and it  
21 would be the fairest thing, given that we know where the  
22 painting is, to allow them to write on the issue, but you've  
23 begun the Hague Convention process, yes?

24 MR. GROSSMAN: Yes.

25 THE COURT: Okay.

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1           Now, assuming, as one hopes, that that works, I'm told  
2 I lack personal jurisdiction over Guzzini, and I might -- who  
3 knows, I might even lack other types of jurisdiction. Tell me,  
4 please, what is it about the original dealings between your  
5 client and Mr. Philbrick that make you believe that this Court  
6 or this state is the right place to bring this claim?

7           MR. GROSSMAN: Yes, sure. Our jurisdictional  
8 argument, your Honor, in the first instance is based on waiver  
9 and consent. It's based on waiver and consent because in the  
10 complaint they filed in state court, paragraphs 4 and 5 --

11           THE COURT: One moment. That complaint they filed in  
12 state court was for another painting, right? It's in the  
13 same -- you would say it's one of three in the same  
14 transaction, but it is a different painting, yes?

15           MR. GROSSMAN: It's a different painting.

16           THE COURT: Okay, fine. Go ahead.

17           MR. GROSSMAN: The rights that they are asserting to  
18 that painting derive from the very same contract that is the  
19 basis of their ownership claim over the Guiton painting at  
20 issue in this case, and that's at paragraphs 4 and 5 of their  
21 complaint, where they say the three works -- that includes the  
22 Guiton -- were purchased under that June 28, 2017 agreement.

23           So our primary argument for jurisdiction -- and if the  
24 Court would like us to brief it, we can, but we do have some  
25 cites supporting --

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1 THE COURT: Excuse me for stopping you. The day will  
2 come when you'll have to brief it, but I suspect we've got an  
3 antecedent issue of how to get them served. They're not  
4 accepting service yet. I'm not, today, going to argue or order  
5 substituted service, although I understand your arguments in  
6 favor of that, I get those. I just need to hear something from  
7 them, and I'll then decide.

8 But I appreciate that I've managed to get us started a  
9 few steps ahead talking about personal jurisdiction. I think  
10 it's in response to things I've heard. I actually would like  
11 to go back a little bit further.

12 The 2013 transaction, tell me, please, about it. I  
13 know you've spoken about it in your complaint, which I've read,  
14 but I want to make sure I understand it. So where did that  
15 transaction take place?

16 MR. GROSSMAN: V&A Collection is based in New York.

17 THE COURT: They are? Okay.

18 MR. GROSSMAN: Yes.

19 THE COURT: Good to know. Okay.

20 MR. GROSSMAN: And it's Mr. Sakhai's --

21 THE COURT: One moment, please.

22 Go ahead.

23 MR. GROSSMAN: Exhibit 4 to Mr. Sakhai's affidavit --  
24 I'm sorry, to our declaration.

25 THE COURT: That is Mr. Sakhai's affidavit, yes.

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1 MR. GROSSMAN: That is correct. It's page 18 of that  
2 document, 18 on the bottom right. That is a July 1st, 2013  
3 invoice from V&A Gallery, with the address at the bottom of  
4 that invoice, it says, "Great network invoiced to Modern  
5 Collections."

6 THE COURT: Okay.

7 Modern Collections, located in London, yes? They  
8 don't have a New York office?

9 MR. GROSSMAN: Correct. To my knowledge, they don't.

10 THE COURT: Okay. I see.

11 MR. GROSSMAN: And -- I'm sorry.

12 THE COURT: No, no, go ahead. I'll let you continue.

13 So this transaction, if it took place -- and, again,  
14 I'm not making any findings, I just want to understand the  
15 factual underpinnings for this -- in or about 2013, July of  
16 2013, your client entered into a transaction with Modern  
17 Collections. They gave up another Guiton, they paid \$350,000,  
18 and they got this painting -- half ownership of this painting,  
19 yes?

20 MR. GROSSMAN: They gave up their interest in the  
21 other Guiton, the Guiton X work --

22 THE COURT: Yes, okay.

23 MR. GROSSMAN: -- in exchange for 50 percent interest  
24 in this work plus 350,000 cash. The money was to come our  
25 direction, not the other way around.

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1 THE COURT: Excuse me, that was confusing to me.  
2 Okay.

3 MR. GROSSMAN: Which is reflected in the invoice  
4 issued by V&A Gallery to Philbrick.

5 THE COURT: Thank you. I understand that.

6 One thing that was a little bit confusing to me, about  
7 two-thirds of the way down the page, there is a parenthetical  
8 that indicates that this is in lieu of payment for \$1,200,000,  
9 previous invoice attached. Is it the case -- and you will  
10 please excuse me if I'm misunderstanding this because I've only  
11 had the case for a couple of days -- your client owned the X  
12 painting?

13 MR. GROSSMAN: Yes.

14 THE COURT: Sold it to Mr. Philbrick, or attempted to  
15 sell it to him? No?

16 MR. GROSSMAN: It's to Modern Collections.

17 THE COURT: Yes, excuse me, to Modern Collections.

18 MR. GROSSMAN: So they effectively traded their  
19 ownership interest of the Guiton X work in exchange for a  
20 50 percent interest in a more valuable work, which is the  
21 Guiton U at issue in this case.

22 THE COURT: Yes, fair enough.

23 It's the million two figure that I'm having difficulty  
24 understanding. At some point, did someone pay a million two  
25 for that painting?

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1 MR. GROSSMAN: No, your Honor. I believe, I believe  
2 that that was the value being ascribed to that work.

3 THE COURT: Thank you. That's what I needed to  
4 understand. Okay.

5 This is all coming from judicial envy, because no one  
6 is paying me anywhere near that for the work that I do, but I  
7 get that now.

8 So they had a painting, they went from X to you, as it  
9 were, but I believe your adversaries have suggested, in the  
10 litigation before Judge Cohen, that there are a number of  
11 lawsuits pending in London regarding Mr. Philbrick and his  
12 dealings.

13 First of all, I believe that is what they said. Do  
14 you agree? Are there litigations pending in London? Are there  
15 other disgruntled customers?

16 MR. GROSSMAN: Oh, there are any number.

17 THE COURT: Okay.

18 So, is your client suing Philbrick?

19 MR. GROSSMAN: We have not sued Philbrick.

20 THE COURT: Is there a reason why you're going after  
21 Guzzini and not Philbrick?

22 MR. GROSSMAN: We're going after the painting, your  
23 Honor.

24 THE COURT: Got it.

25 So this is your version of the in rem action?

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1 MR. GROSSMAN: That's right. Initially, it was a  
2 replevin case, your Honor. Once we learned of the purported  
3 transfer, we amended it to a conversion claim. To be clear,  
4 that's not to say we won't go after Philbrick. Philbrick is on  
5 the run right now. Nobody knows where he is. He's being  
6 investigated by authorities here and abroad.

7 THE COURT: So much more interesting than my life.

8 MR. GROSSMAN: We can chase him forever, we can chase  
9 a judgment against him -- I don't know that that would be worth  
10 anything -- but there's no question, and I think everybody will  
11 or should agree, that Philbrick is ultimately the one  
12 responsible for this massive mess we're in right now.

13 THE COURT: Where is the X painting right now?

14 MR. GROSSMAN: I don't know. That was sold to  
15 Philbrick or Modern Collections back in 2013. I don't know  
16 where it is.

17 THE COURT: So it's not even as though you could get  
18 the X back and they can keep the U. That would be a great  
19 resolution, but it's not happening.

20 For the moment, because this is our initial  
21 conference, I will hear from you on anything you want to tell  
22 me, but there were really two issues to address today, and the  
23 biggest was the discovery issue, which I have the answers I  
24 needed for that, and then the second is the service issue,  
25 which I will hear from Ms. Lindstrom, but I suspect I'm going

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1 to need to hear in writing as well.

2 Are there other things you want to call to my  
3 attention?

4 MR. GROSSMAN: Well, I think, your Honor, quite  
5 frankly, in light of the representations by Guzzini that the  
6 work will not be transferred, moved, sold, or otherwise  
7 disposed of, we're --

8 THE COURT: One moment, please.

9 Do I still have that, Ms. Lindstrom?

10 MS. LINDSTROM: You have that representation from me,  
11 but not from Guzzini. And I will call the principal at  
12 Guzzini, who's a director at Lanark, and let him know that, and  
13 I am very certain that that will be abided by. That's a  
14 representation from Wendy Lindstrom.

15 THE COURT: Very fair.

16 Could I have a written submission from you next week,  
17 documenting that you have obtained from your client that  
18 representation?

19 MS. LINDSTROM: Yes, your Honor, no problem.

20 THE COURT: Okay, fine.

21 MR. GROSSMAN: So my point is, in light of that  
22 representation, the need for substituted service, at least for  
23 present purposes --

24 THE COURT: Agreed.

25 MR. GROSSMAN: -- I think is obviated. We were trying



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1 to hurry up to get this information that we now have.

2 THE COURT: Well, I'm with you. I'd like to see the  
3 Hague Convention work its magic and not have either of you  
4 expend further resources in a motion that I cannot say is a  
5 sure thing.

6 So, does that mean today we're done -- although I do  
7 want to hear from the back table -- and it's just a question of  
8 what happens once they get served?

9 MR. GROSSMAN: I think that's right, your Honor.

10 THE COURT: Okay.

11 What, if anything, will you be doing in Judge Cohen's  
12 action?

13 MR. GROSSMAN: With regards to this painting?

14 THE COURT: With regards to anything. Are you just  
15 showing up as someone who has a peripheral interest in what's  
16 going on in that cases? Because if I understood correctly, the  
17 idea was to have the two cases going in tandem, and now they're  
18 not.

19 MR. GROSSMAN: Well, your Honor, quite frankly, we  
20 approached it that way, in the first instance, for the ease of  
21 all the parties where those issues were being litigated. At  
22 Justice Cohen's directive, we filed a separate lawsuit, which  
23 he would then coordinate. We were in court following that  
24 filing. We met with his staff in chambers. It was only  
25 because of a scheduling conflict that he asked us to come back

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1 that Monday, and it was that Friday night that we were removed.  
2 Not that we don't want to be here, your Honor, but we think it  
3 makes a lot of sense for these issues arising out of the same  
4 contracts to be adjudicated together with the proceeding that  
5 was filed in state court.

6 THE COURT: I don't have the -- you can't remove that  
7 one.

8 MR. GROSSMAN: That's right. But we could, your  
9 Honor, ask Justice Cohen, in light of these developments, to  
10 reconsider the motion to intervene. He didn't deny it, he just  
11 didn't sign the order to show cause and asked us to proceed  
12 differently.

13 THE COURT: I will give you no advice on that point,  
14 but someone will tell me how that works out.

15 Other things you'd like me to know, sir?

16 MR. GROSSMAN: I'd like to just, because it was raised  
17 before, point out one issue under the contract --

18 THE COURT: Which contract, sir? Theirs?

19 MR. GROSSMAN: Their contract.

20 THE COURT: Okay. That they say is a sale agreement  
21 and you say is a loan?

22 MR. GROSSMAN: That's right, your Honor.

23 THE COURT: I'm looking at it right now, sir.

24 MR. GROSSMAN: The only point I'll make in that  
25 regard, though we have more, relates to what we've heard about

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1 the purchase price. There was a \$6 million payment made. If  
2 you look at the schedule of artworks, the combined insurance  
3 value of these three works, including the work at issue here,  
4 was \$25 million. You can call something an agreement anything  
5 you want, but at its essence, for any number of reasons, but  
6 that purchase price being the most significant, this was not a  
7 good-faith purchase for value, which, under U.K. law, we  
8 understand to be almost identical to the U.C.C. framework here.

9 THE COURT: I understand the argument. Thank you very  
10 much.

11 MR. GROSSMAN: Thank you, your Honor.

12 THE COURT: Excuse me. Mr. Grossman, lest I forget,  
13 when this proceeding is done, could you please arrange to  
14 obtain a transcript in the ordinary course?

15 MR. GROSSMAN: Of course.

16 THE COURT: If you order it, I'll receive it  
17 automatically, but there's been a lot spoken today, and I do  
18 want to have it for my records.

19 MR. GROSSMAN: Very good. Thank you, your Honor.

20 THE COURT: Thank you so much.

21 Ms. Lindstrom, your discussions with me may be a bit  
22 shorter now, given the conversation I've had with Mr. Grossman,  
23 but I'll hear from you. It sounds like we can let the Hague  
24 Convention proceed as it does, and when your client is served,  
25 in all likelihood, you'll be representing them, and then you

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1 can come back and tell me what's going on, but I'll hear from  
2 you on anything else you want to be heard on.

3 MS. LINDSTROM: Thank you, your Honor.

4 The first thing that came to mind when counsel was  
5 speaking about the contract: I just want to make it clear that  
6 it's our view that this contract has no bearing on V&A, this  
7 plaintiff, and this action. It's unrelated, which is why I  
8 wanted -- which is why I tactically decided on Friday night to  
9 remove the case to federal court, because I wanted a fresh set  
10 of eyes on it, separate of the dispute that does involve the  
11 contract in New York Supreme.

12 And, then, since you had asked counsel if there was  
13 anything else that he wanted to call to your attention, there's  
14 one other thing I do want to call to your attention because I'm  
15 just so frustrated over what went on.

16 THE COURT: Yes.

17 MS. LINDSTROM: Counsel, during that meeting with my  
18 client, asked my client why I was chosen to be their lawyer and  
19 then made a comment insinuating that I was an insurance lawyer,  
20 which certainly --

21 THE COURT: What does that mean?

22 MS. LINDSTROM: That's what I want to know, your  
23 Honor.

24 THE COURT: No, no.

25 By the way, and apropos of nothing, I'm married to an

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1 insurance lawyer, but I think of it as someone who handles  
2 coverage disputes, which I don't think you do.

3 MS. LINDSTROM: Your Honor, we do, actually, and we do  
4 have a very prolific insurance practice, which I am very happy  
5 to have, but, that being said, the sentiment, that at least my  
6 client told me, was to try and undermine my ability to be -- to  
7 practice in the area of art law, and I think that's important  
8 to tell the Court, that this is -- there's a lot going on here  
9 that we want the Court to be aware of.

10 And then we find a lot of the activities involving his  
11 client in this matter and in other matters suspicious, and we  
12 wanted to have two separate sets of eyes on it. It was  
13 certainly nothing untoward, we certainly want to have  
14 transparency, and we wanted to work with the Court to resolve  
15 these, but the bottom line is, it's our view that there is no  
16 connection between V&A and this contract, there's no connection  
17 whatsoever between V&A and the Stengel and the other state law  
18 in the state court case, and there's absolutely no connection  
19 over Guzzini here. Guzzini did not avail itself of the courts  
20 in the State of New York. They weren't doing business in the  
21 State of New York. There's all kinds of jurisdictional  
22 arguments that we'd like to brief here.

23 The action was designed as an in rem proceeding  
24 because in addition to insurance law, which I love, I practice  
25 admiralty law, and I thought that would be a smart vehicle to

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1 go after the work of art, which my client put on consignment  
2 with Christie's. Everything in the state court action is  
3 designed around my client's contact with Christie's for that  
4 one sale. But there's no general or specific jurisdiction in  
5 this court that involves the Guiton in any way.

6 So it's our view that the state court can adjudicate  
7 that in rem action, which I may have even removed to federal  
8 court or placed in federal court originally because being from  
9 an admiralty background, I do practice a lot in federal court,  
10 but I would have put it in, but I didn't see any real  
11 jurisdiction under admiralty jurisdiction or federal question  
12 to do that at first. But when I had the opportunity, which I  
13 thought of on Friday afternoon, to move this to federal court,  
14 I thought it would be a good tactical decision to get a fresh  
15 set of eyes on this Guiton case and to put a little distance  
16 between the Stengel and the Guiton because they're completely  
17 unrelated.

18 THE COURT: Okay.

19 Anything else? I'm sorry, Ms. Lindstrom, anything  
20 else?

21 MS. LINDSTROM: Oh, no, your Honor, that's all. Thank  
22 you.

23 THE COURT: Mr. Lerner, do you want to be heard on  
24 anything, sir?

25 MR. LERNER: You'll hear me on paper.

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1 THE COURT: Okay. Thank you very much.

2 And, Ms. Hogan, everybody gets to talk here. Anything  
3 you'd like to add?

4 MS. HOGAN: No, your Honor.

5 THE COURT: Okay.

6 It sounds like I'll hear from you when Guzzini is  
7 served per the Hague Convention. If at any time you want to  
8 come in earlier, you'll let me know. You know how to reach me.  
9 Please tell your client's director not to dispose of the  
10 painting because we'll all be very sad. And -- all right.  
11 Thank you very much. I will see you --

12 MR. LERNER: Your Honor, one other thing?

13 THE COURT: Yes, sir.

14 MR. LERNER: On the form, the civil cover sheet, I  
15 indicated Guzzini's registered address in the British Virgin  
16 Islands. I think V&A's counsel can just look at that cover  
17 sheet and see the most efficient way, a place to serve Guzzini.

18 THE COURT: I see.

19 MR. LERNER: It shouldn't be a heavy lift.

20 MR. GROSSMAN: We've done that as well, your Honor.

21 THE COURT: He's -- I won't say one step ahead of you.  
22 He is walking hand in hand with you.

23 All right. Thank you very much. Have a great  
24 weekend.

25 COUNSEL: Thank you, your Honor. \* \* \*